

("FDCPA"), 28 U.S.C. 3304(b), to provide partial satisfaction of response costs owed by LWG under CERCLA. The Consent Decree resolves the United States' claims against defendant LWG on an inability to pay basis. Resolution of claims against LWG terminates the need for inclusion of Omni in this matter as a Rule 19 defendant. Although, LWG is currently dissolved and without assets available to satisfy its CERCLA liability, under the proposed Consent Decree Omni will pay \$218,250, approximately one-half of the available equity in the subject property, on behalf of LWG.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Daniel Green, et. al.*, D.J. Ref. 90-11-2-06906.

The Consent Decree may be examined at the Office of the United States Attorney, 221 East Fourth Street, Suite 400, Cincinnati, Ohio and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$3.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-6105 Filed 12-19-07; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Commscope, Inc. and Andrew Corporation;

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. CommScope, Inc. and Andrew Corporation*, Civil Action No. 07-02200. On December 6, 2007, the United States filed a Complaint alleging that the proposed acquisition by CommScope, Inc. ("CommScope") of Andrew Corporation ("Andrew") would violate section 7 and section 8 of the Clayton Act, 15 U.S.C. 18, 19 by substantially lessening competition in the United States market for drop cable and creating interlocking directorates between competing companies. The proposed Final Judgment, filed the same time as the Complaint, requires the divestiture of: (a) Andrew's entire stock ownership in Andes Industries, Inc. ("Andes"); (b) all notes of indebtedness in favor of Andrew by Andes; (c) all warrants to acquire additional stock of Andes; and (d) intellectual property relating to the "Z-Wire" product sold by Andes' subsidiary PCT International, Inc. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Suite 215, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>. and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments

should be directed to Nancy Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (telephone: 202-514-5621).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, *Plaintiff*, v. CommScope, Inc., 1100 CommScope Place, SE., Hickory, North Carolina 28603 and Andrew Corporation, 3 Westbrook Corporate Center, Suite 900, Westchester, IL 60154, *Defendants*.

Case No.1 :07-cv-02200.

Assigned To: Lamberth, Royce C. Assign

Date: 12/6/2007.

Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition of Andrew Corporation ("Andrew") by CommScope, Inc. ("CommScope") and alleges as follows:

1. CommScope is a large manufacturer of wire and cable products used by, among others, telecommunications companies. CommScope is the leading manufacturer of drop cable in the United States, with a market share of approximately 60 to 70 percent. "Drop cable" is coaxial cable used by cable television providers to connect their transmission systems to their customers' premises and equipment inside the customers' premises. Drop cable sales average approximately \$500 million a year in the United States.

2. Andrew is a global designer, manufacturer and supplier of communications equipment and systems. Andrew was a manufacturer of drop cable until it sold this business in March 2007 to Andes Industries, Inc. ("Andes"). Andes' subsidiary, PCT International, Inc. ("PCT"), is a manufacturer of broadband hardware products used with drop cable installations. PCT and another Andes subsidiary, PCT Broadband Communications (Yantai) Co. Ltd. ("PCTY"), manufacture and sell drop cable. As a result of two transactions between Andrew and Andes, Andrew holds thirty (30) percent of Andes' equity and voting shares, a warrant that could allow it to increase its share holdings, and several Andes' notes of indebtedness. Andrew also has certain

governance rights, including the right to appoint one of Andes' three board members.

3. On June 26, 2007, defendants CommScope and Andrew entered into an Agreement and Plan of Merger, pursuant to which CommScope will acquire Andrew in an all-stock transaction valued at approximately \$2.6 billion.

4. As a result of the proposed acquisition, CommScope will obtain a 30 percent ownership interest in, and the right to appoint members to the board of directors of, one of its most significant competitors in the development, manufacture, and sale of drop cable. In addition, given its ownership of shares, warrants and debt instruments, and its governance rights, it will be able to exert substantial control over Andes. Therefore, CommScope's acquisition of Andrew would violate section 7 and section 8 of the Clayton Act because it would substantially lessen competition in the market for drop cable and would create interlocking directorates between competing companies.

I. Jurisdiction and Venue

5. This action is filed by the United States under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the violation by defendants of section 7 and section 8 of the Clayton Act, 15 U.S.C. 18, 19.

6. Defendant CommScope and defendant Andrew both manufacture and sell telecommunications products throughout the United States. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. This Court has jurisdiction over this action and the defendants pursuant to section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

7. Defendants transact business and are found within the District of Columbia. Venue is proper in the district under 15 U.S.C. 22, and 28 U.S.C. 1391(c). Defendants acknowledge personal jurisdiction in the District of Columbia and consent to venue.

II. Defendants

8. Defendant CommScope, with its headquarters in Hickory, North Carolina, is a corporation organized and existing under the laws of the state of Delaware. CommScope is a major manufacturer and provider of wire and cable products. For fiscal year 2006, it reported total revenues in excess of \$1.6 billion, with \$550 million coming from its broadband business segment, which supplies cable and hardware products to

cable television and telecommunications companies.

9. Defendant Andrew, with its headquarters in Westchester, Illinois, is a corporation organized and existing under the laws of the state of Delaware. Andrew is a major manufacturer and supplier of antenna and cable products and products for wireless communication systems. For fiscal year 2006, it reported total sales in excess of \$2.1 billion, with approximately \$1.3 billion coming from its antenna and cable business segment.

10. Andrew holds extensive interests in, and the means to exercise effective control over, Andes and its subsidiaries, PCT and PCTY. Andrew owns shares of Andes equal to 30 percent of Andes' equity. It holds a warrant to purchase up to ten percent more of Andes' equity. It holds three notes of indebtedness issued by Andes and Andes' subsidiaries, in a total amount of almost \$16 million. Andrew currently designates one member of Andes' three-member board of directors. After CommScope acquires Andrew, the combined firm will have the right to designate two members and, jointly with another Andes' shareholder, to select two more members of Andes' board, which will then consist of seven members. Andes and Andrew also have entered into an Amended and Restated Investor Rights Agreement (the "IRA") which effectively requires, and will continue to require, Andrew's approval for a wide range of Andes' corporate actions.

III. Violation of Section 7 of the Clayton Act: Acquisition Substantially Lessening Competition

A. Relevant Product Market

11. Drop cable is 75 ohm coaxial cable used by cable television companies to connect their transmission systems with their customers' premises and equipment inside the customers' premises. Drop cable consists of a plastic jacket, metal braid and foil shielding, a dielectric layer, and a center conductor. Drop cable is used by cable television companies in three different kinds of locations: (1) In the air between outside poles and the exteriors of the customers' premises; (2) underground between buried transmission systems and the exteriors of the customers' premises; and (3) inside the customers' premises to connect the exterior cables with customer-premises devices. Drop cable strung between outside poles and the exteriors of the customers' premises typically contains an ultraviolet ("UV") protectant in the jacket and a steel wire, called a "messenger," inside the cable to reduce flexing; much of this aerial cable

also incorporates anti-corrosion protection for the metal shielding. Drop cable used underground typically is "flooded" with a gel compound in order to prevent water ingress and corrosion.

12. No matter how it is used, all drop cable purchased by cable television companies is distinguished from other 75 ohm coaxial cable, which is usually called "commodity" cable. Drop cable must meet Society of Cable Television Engineers ("SCTE") and other cable television industry standards. Those standards address, inter alia, durability, uniformity, electrical conduction and signal shielding. Signal shielding standards address the ability of the cable to prevent signal leakage outside the cable, as well as leakage into the cable of extraneous outside signals. Compliance with SCTE and other industry standards assures cable television companies that the drop cable they buy will not require frequent replacement, will fit with the other components of their systems, can readily be handled by a cable system's installers and technicians, and, most importantly, will deliver a strong and interference-free signal. Because it must meet SCTE and other industry standards, drop cable is substantially more difficult to manufacture than commodity cable.

13. A small but significant increase in the price of drop cable would not cause cable television companies to substitute commodity cable so as to make such a price increase unprofitable. Cable television companies could not use commodity cable without: Substantially increasing the cost and difficulty of installing and servicing the cable in their systems, and seriously jeopardizing their relationships with their own customers because of poor signal quality. In addition, commodity cable typically lacks the UV and anti-corrosion protection, and interior messengers, usually required for aerial drop cable, and the flooded gel compounds typically required for underground drop cable.

14. Accordingly, the development, manufacture, and sale of drop cable is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

B. Geographic Market

15. The United States is a distinct geographic market for the sale of drop cable. SCTE and cable television industry standards are designed to meet the needs of cable television companies operating in the United States. Although PCTY and CommScope manufacture drop cable in China for sale in the United States, no foreign companies

make drop cable that conforms to SCTE and United States cable television industry standards, and no foreign companies sell drop cable to cable television companies in the United States. In addition, cable television companies in the United States require their suppliers to have a substantial presence within the United States, including distribution facilities and service infrastructures. No foreign company maintains such a presence for drop cable in the United States. Therefore, a small but significant increase in the price of drop cable would not cause cable television companies in the United States to substitute purchases from companies who operate outside the United States in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of section 7 of the Clayton Act, 15 U.S.C. 18.

C. Anticompetitive Effects

16. The proposed transaction, including CommScope's acquisition of Andrew's interests in Andes, would substantially lessen competition in the market for drop cable in the United States. The market for drop cable is already highly concentrated. There are only four companies that provide drop cable to cable television companies in the United States. CommScope is the leading manufacturer, with a market share of between 60 and 70 percent. PCT is the third largest manufacturer with about a four percent market share. PCT is having a significant impact in the market because of its low pricing and ability to offer drop cable with dry anti-corrosion protection.

17. The full product lines offered by CommScope and PCT make them each other's closest competitors for many customers. Of the four manufacturers, only CommScope and PCT offer aerial drop cable in which a dry chemical coating is applied to the cable's braided metal shield to prevent corrosion of the metal. The processes by which both firms make products in this category—called Brightwire by CommScope and Z-Wire by PCT—are protected by patent. Many cable television firms need or prefer the dry anti-corrosion protection offered by Brightwire or Z-Wire. This is especially true for firms whose cable television systems are located in areas prone to metal oxidation, such as areas near sea coasts.

18. Competition between PCT and CommScope in the sale of drop cable has benefitted consumers. The competition by PCT and its predecessor Andrew in the drop cable market has

constrained CommScope's pricing. The prices charged by Andrew and PCT generally have been five to ten percent lower than those charged by CommScope and other competitors. Andrew's and later, PCT's, market share has been increasing as a greater number of cable television firms have approved their products for purchase.

19. PCT and CommScope also compete with each other in product innovation. CommScope developed the first dry anti-corrosion protected drop cable product, Brightwire. Andrew developed Z-Wire specifically to compete for sales that would otherwise have gone to Brightwire. PCT and CommScope have continued to develop new technology in drop cable.

20. Through the proposed acquisition of Andrew by CommScope, CommScope will acquire a substantial interest in, as well as substantial control over, one of its most significant drop cable competitors. In addition to holding a 30 percent interest in Andes, Andrew holds significant rights under the IRA to control core business decisions and to obtain critical confidential competitive information from Andes and PCT. Through the acquisition, CommScope would gain, among other rights, the rights to appoint Andes' board members and to veto important business decisions by Andes, such as issuing capital stock, changing executive compensation, and making certain acquisitions of other corporations. Post-merger, CommScope would likely have the ability and incentive to coordinate the activities of CommScope and PCT, and/or undermine PCT's ability to compete against CommScope on price and innovation. Such activity would likely result in a significant lessening of competition. This loss of competition would likely result in higher prices, reduced innovation, and fewer choices for customers.

D. Entry

21. Successful entry into the drop cable market would not be timely, likely or sufficient to deter the anti-competitive effects resulting from this transaction. The drop cable industry has been characterized by firms exiting and failed entry attempts. Andrew itself began the process of entering the market in 1997, and only now, ten years later, has its successor, PCT, achieved a four percent market share.

22. Timely entry sufficient to replace the market impact of PCT would be difficult for several reasons. Any new manufacturer would have to develop a product line and set up a manufacturing facility, submit sample products for the extensive laboratory and field tests

required by all substantial cable television firms, and then undergo the lengthy process of attempting to sell the products to those companies. PCT's success is due in part to its ability to offer a full line of drop cable products. A new entrant could not duplicate that success unless it could offer drop cable with dry anti-corrosion protection. The Brightwire and Z-Wire products are both protected by patent. Development of a new process which does not infringe on those patents would likely be time-consuming and difficult.

IV. Violation of Section 8 of the Clayton Act: Interlocking Directorates

23. CommScope is a corporation engaged in commerce. It manufactures, among other things, drop cable and, through a wholly-owned subsidiary, hardware products associated with drop cable installations. Andes, through its wholly-owned subsidiaries, PCT and PCTY, is engaged in commerce. PCT and PCTY manufacture drop cable and hardware products associated with drop cable installations. Both CommScope and PCT sell drop cable and associated hardware products throughout the United States. With respect to those products, CommScope and PCT are, by virtue of their businesses and locations of operations, competitors, and the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

24. Both CommScope and Andes have capital, surplus and undivided profits in excess of \$24,001,000. Both CommScope and Andes had sales in their last fiscal years of products in competition with products of the other exceeding \$2,400,100. Each firm's annual competitive sales of these products exceeded two percent of its total sales. The annual competitive sales of these products by each firm also exceeded four percent of its total sales.

25. Section 6 of the IRA now conveys to Andrew a right to appoint one member of Andes' three-member board of directors. When CommScope completes its acquisition of Andrew, Section 6 requires Andes' board of directors to be reconstituted as a new board of seven members. At that time section 6 will convey to Andrew, and by extension to CommScope, the right to designate two of the seven members of Andes' board of directors. In addition, Andrew, and by extension CommScope, will have the right to select, jointly with another Andes shareholder, two more members of Andes' board of directors.

26. CommScope is a person within the meaning of section 8 of the Clayton Act, 15 U.S.C. 19. CommScope

nominates the members of its own board of directors. Its nominees, designees and selectees for the Andes' board stand or will stand in its stead for the purposes of section 8. CommScope will thus, when it completes its acquisition of Andrew, participate through its representatives both on its own board of directors and on the Andes' board of directors.

V. Violations Alleged

Count One

(Violation of Section 7 of the Clayton Act)

27. Each and every allegation in paragraphs 1 through 26 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

28. CommScope and Andrew are hereby named as defendants on Count One of this complaint.

29. The effect of the proposed acquisition by CommScope of Andrew may be to lessen competition substantially in the development, manufacture, and sale of drop cable in the United States, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

30. Unless restrained, the proposed acquisition by CommScope of Andrew likely will have the substantial anti-competitive effects set forth in 16–20 above, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

Count Two *(Violation of Section 8 of the Clayton Act)*

31. Each and every allegation in paragraphs 1 through 26 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

32. CommScope and Andrew are hereby named as defendants on Count Two of this Complaint.

33. The proposed acquisition by CommScope of Andrew, by conveying to CommScope rights to designate members of the board of directors of Andes will create interlocking directorates between competing corporations, in violation of section 8 of the Clayton Act, 15 U.S.C. 19.

VI. Requested Relief

34. Plaintiff requests:

a. That the proposed acquisition be adjudged to violate Section 7 and Section 8 of the Clayton Act, 15 U.S.C. 18, 19;

b. that the defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated June 26, 2007, or from entering into or carrying out any agreement,

understanding, or plan by which CommScope would merge with or acquire Andrew, and that includes any ownership interests or governance rights in Andes;

c. that defendants and all persons acting on their behalf be enjoined and restrained from violating Section 8 of the Clayton Act, 15 U.S.C. 19.

d. that the United States be awarded the costs of this action;

e. that the United States be granted such other and further relief as the Court may deem just and proper.

Dated:

Respectfully Submitted,

For Plaintiff United States of America:

/s/

Thomas O. Barnett (D.C. Bar No. 426840)
Assistant Attorney General
Antitrust Division

/s/

J. Robert Kramer II
Director of Operations
Antitrust Division

/s/

Nancy M. Goodman (D.C. Bar No. 251694)
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United States District Court District of Columbia

United States of America, Plaintiff, v.
CommScope, Inc., and Andrew Corporation,
Defendants.

Case No: 1:07-cv-02200.
Filed: 12/6/2007.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on December 6, 2007, the United States and defendants, CommScope, Inc. (“CommScope”) and Andrew Corporation (“Andrew”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or

admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Andrew and CommScope to assure that competition is not substantially lessened;

And whereas, the United States requires Andrew and CommScope to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under section 7 and section 8 of the Clayton Act, as amended (15 U.S.C. 18,19).

II. Definitions

As used in this Final Judgment:

A. “CommScope” means defendant CommScope, Inc., a Delaware corporation with its headquarters in Hickory, North Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Andrew” means defendant Andrew Corporation, a Delaware corporation with its headquarters in Westchester, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Acquirer” means the entity or person to whom defendants divest their interests in the Andes Holdings.

D. “Andes” means Andes Industries, Inc., a Nevada corporation with its headquarters in Gilbert, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint

ventures, and their directors, officers, managers, agents, and employees.

E. "PCT" means PCT International, Inc., a wholly-owned subsidiary of Andes.

F. "Yantai Factory" means the factory in Yantai City, China formerly operated by Andrew Broadband Telecommunications (Yantai) Co., Ltd., now operated by PCT Broadband Communications (Yantai) Co. Ltd., a subsidiary of Andes located in Yantai City, China, and used to manufacture, inter alia, coaxial cable.

G. "IRA" means the Amended and Restated Investor Rights Agreement dated March 30, 2007 between Andes and Andrew.

H. "Andes Holdings" means stock representing Andrew's entire ownership interest in Andes, the Z-Wire IP, as well as all notes of indebtedness in favor of Andrew by Andes, and warrants to acquire additional stock of Andes, including but not limited to:

1. Senior Note dated April 2, 2007 issued in favor of Andrew for the amount of \$9,035,000;

2. Senior Note dated March 30, 2007 issued in favor of Andrew Corporation Mauritius for the amount of \$5,592,000;

3. Promissory Note, dated September 29, 2006, issued in favor of Andrew for the amount of \$1,016,000; and

4. Warrant to Acquire Common Stock of Andes dated April 2, 2007, held by Andrew and Andrew Corporation Mauritius.

I. "Youtsey" means Steve Youtsey, Chief Executive Officer of and stockholder in Andes.

J. "Drop Cable" means 75 ohm coaxial cable used by cable television companies to connect their transmission systems with their customers' premises and equipment inside the customers' premises.

K. "Z-Wire IP" means all intellectual property concerning the "Z-Wire" product now made and sold by PCT and PCT Broadband Communications (Yantai) Co. Ltd. This intellectual property shall include, but not be limited to, the "Z-Wire" Trademark, Serial No. 78,658,023 and the patent, U.S. Patent No. 7,084,343 B1, dated August 1, 2006, concerning the Z-Wire product.

III. Applicability

A. This Final Judgment applies to CommScope and Andrew, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with sections IV and V of this Final Judgment,

defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Andes Holdings, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 90 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Andes Holdings in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. Divestiture of all the Andes Holdings shall be made to one Acquirer. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed 60 calendar days in total, and shall notify the Court in such circumstances. If within the initial period for divestiture, plus any extensions, an agreement with a prospective Acquirer has been reached and the prospective Acquirer, and the terms of the acquisition agreement, have been approved by the United States, and the defendants have provided the written notice of intent to sell required by section 4.1(b) of the IRA ("IRA 4.1(b)"), the time for completing the divestiture shall automatically be extended, in order to allow defendants to comply with the right of first refusal provision in IRA 4.1(b). The period of this extension shall not exceed five (5) days past the date on which both Andes and Youtsey have failed to timely (a) deliver a Right of First Refusal ("ROFR") Notice accompanied by a Reasonable Assurances Letter pursuant to IRA 4.1(b); or (b) consummate the purchase of Andrew's ownership interest in Andes pursuant to IRA 4.1(b). Defendants agree to use their best efforts to divest the Andes Holdings as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Andes Holdings. Defendants shall inform any person making inquiry regarding a possible purchase of the Andes Holdings that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective acquirers, subject to customary confidentiality assurances, all information and documents that are

available to them relating to the Andes Holdings or to Andes, to the extent permitted by sections IV(C) and VIII(B) below or by sections V(A) and V(B) of the Hold Separate and Stipulation Order, and customarily provided in a due diligence process, except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall, at the option of Andes, continue to provide the services now provided pursuant to the Transition Services Agreement dated March 30, 2007, according to the terms of that Agreement, until the end of February 2008. At the end of the period in which defendants provide transition services, defendants shall, at the option of Andes, provide a copy in a format acceptable to Andes from the relevant Andrew servers of all historic data concerning operation of the Yantai Factory. In any event, defendants shall maintain the operations software and the data on the servers for a period of two months after completion of the transition services period, and, during those two months, shall make available to Andes any information on the servers that is requested by Andes, except the licensed software itself. At the end of those two months, defendants shall erase from the servers all data relating to the operations of the Yantai Factory, but they may keep one copy of that data, which copy they shall place in the custody of their outside counsel. Defendants shall not access or use the Andes data on the servers or the copy for any purpose; provided, however, that, pursuant to a protective order issued by the Court, outside counsel and employees whose participation is necessary may access the Andes data to the extent necessary for the defense of a lawsuit or in connection with a regulatory or tax proceeding of which the defendants are, or one of them is, the subject.

D. To the extent that Andrew now provides services, materials or building space to Andes, defendants shall, at the option of Andes, continue to provide those services, materials and building space on the existing terms until the end of the period in which defendants provide transition services pursuant to section IV(C) above. During the period in which defendants continue to provide services to Andes, they may not reduce the quality or timeliness of those services, including services under both this and section IV(C) above.

E. Defendants shall divest to the Acquirer, as part of the Andes Holdings, the Z-Wire IP. The Acquirer shall acquire this intellectual property subject to Andrew's rights and obligations under the Technology Licensing Agreement dated March 30, 2007, between Andrew and PCT Broadband Communications (Yantai) Co. Ltd. Andrew shall assign its part in that agreement to the Acquirer, the Acquirer shall assume Andrew's position as licensor under the agreement, and PCT Broadband Communications (Yantai) Co. Ltd. shall remain the licensee. As part of the divestiture of the Z-Wire IP, the Acquirer shall offer defendants a non-exclusive, royalty-free license to use U.S. Patent No. 7,084,343 B1, provided that the license does not permit defendants to use the Z-Wire IP to develop, make, use or sell Drop Cable products and provided that the license does not directly or indirectly affect Andes' ability to use the Z-Wire IP. Prior to the divestiture of the Z-Wire IP, defendants shall, at the option of Andes, grant Andes and PCT a perpetual, worldwide and royalty-free license to use the "Z-Wire" trademark, Serial No. 78,658,023, and the Z-Wire trademark, Serial No. 78,658,023 shall be divested to the Acquirer subject to that license.

F. Defendants shall not take any action that will jeopardize, delay or impede in any way the divestiture of the Andes Holdings.

G. Unless the United States otherwise consents in writing, the divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Andes Holdings, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Andes will remain a viable competitor in the market for Drop Cable, and that the divestiture will remedy the competitive harm alleged in the Complaint resulting from CommScope's acquisition of Andrew. In addition, the divestiture, whether pursuant to section IV or section V of this Final Judgment, shall be made to an Acquirer that in the United States' sole judgment has the intent and capability of investing in Andes in such a manner as to support the continued competitive operations of its Drop Cable business and shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants unreasonably raises Andes' costs, lowers Andes' efficiency, or otherwise interferes in the ability of Andes to compete effectively.

H. Upon completion of the divestiture to the Acquirer, neither the defendants

nor the trustee shall have any rights under the IRA.

I. Nothing in this Final Judgment shall prohibit defendants from seeking payment of the notes within the Andes Holdings or for services or products supplied under the terms of any agreement with Andes, and taking action to collect any amounts past due under those agreements, including institution of legal proceedings to collect those overdue amounts; provided, however, that defendants may not undertake legal actions that would jeopardize the divestiture required by this Final Judgment or Andes' continuing viability, including, but not limited to, seeking accelerated payment of principal or other amounts not currently overdue or seeking to place Andes in involuntary bankruptcy; nor may defendants exercise any right under the Warrant to acquire additional Andes stock.

V. Appointment of Trustee

A. If defendants have not divested the Andes Holdings within the time period specified in section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Andes Holdings.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Andes Holdings. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs

and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to CommScope (or to Andrew if Andrew has not been acquired by CommScope at that time) and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Andes Holdings and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to Andrew's personnel responsible for its Andes investment and to documents and information concerning Andes in Andrew's possession, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, the Andes Holdings, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Andes Holdings.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain

information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Andes Holdings, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided with the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by

the United States, a divestiture proposed under section IV or section V shall not be consummated. Upon objection by defendants under section V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

A. Until the divestiture required by this Final Judgment has been accomplished, the defendants shall be bound by, and shall take all steps necessary to comply with, the Hold Separate Stipulation and Order entered by this Court. The Hold Separate Stipulation and Order shall survive entry of this Final Judgment until the divestiture has been completed.

B. Defendants shall not access or use any written confidential information provided to defendants by Andes about Andes' business operations, or access or use any written confidential information still possessed by Andrew about its former Drop Cable business and the Yantai Factory. Outside counsel for defendants and employees whose participation is necessary, may, however, access such information to the extent necessary to meet legal or regulatory requirements or to conduct a defense of a lawsuit, but only subject to a protective order by the Court. Defendants may also designate a third party agent approved by the United States to access on their behalf such confidential business information to which defendants are otherwise entitled for the purpose of sharing that information with bona fide prospective acquirers of the Andes Holdings. The agent shall identify to Andes in advance all prospective acquirers with whom confidential information will be shared, and shall, at Andes' request, require those prospective acquirers to execute confidentiality agreements binding them to keep the information confidential and to use it for no purpose other than to evaluate the prospective acquisition. The agent may not in any circumstances share any Andes confidential information with defendants.

C. Defendants shall take no action that would diminish the value of the Andes Holdings.

IX. Survival of Agreements

The Trademark License Agreement dated March 30, 2007 among Andrew, PCT and Andes, shall remain in force according to its terms. CommScope

shall comply with Andrew's obligations under that agreement. Defendants shall not unreasonably interfere with the rights of Andes and PCT to use the subject intellectual property licensed under that agreement. Prior to the divestiture, the Trademark License Agreement shall, with respect to the "Z-Wire" trademark, Serial No. 78,658,023, be superseded by the new Z-Wire trademark license described in section IV(E) above.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit with respect to section IV shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Andes Holdings, and shall describe in detail each contact with any such person during that period. Each such affidavit with respect to section IV shall also include a description of the efforts defendants have taken to solicit buyers for the Andes Holdings, and to provide required information to prospective acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Andes Holdings until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States

shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Restrictions on Acquisition

Defendants may not reacquire all or any part of Andes or the Andes Holdings within the term of this Final Judgment, unless: (1) Defendants have, not earlier than the date three years after the Andes Holdings are divested, filed a Notification and Report required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and all applicable waiting periods under that Act have expired, *or*; (2) if no such Notification and Report is required, defendants have, not earlier than the date three years after the Andes Holdings are divested, provided written notice to the United States containing information equivalent to that required in a Hart-Scott-Rodino Notification and Report, and either thirty days thereafter the United States has not issued a request for further information and documents, or, if the United States has issued such a further request, thirty days have expired since the date on which defendants certify that they have substantially complied with that further request, *and*; (3) in either or both of the preceding cases, the United States has not objected in writing to the reacquisition. Provided, further, that the Andes Holdings are deemed to include any license defendants might acquire to use any part of the Z-Wire IP for Drop Cable. Nothing in this Final Judgment affects any ability defendants may otherwise have to acquire any parts of Andes' business that solely concern products other than Drop Cable.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact

Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

In the United States District Court for the District of Columbia

United States Of America, *Plaintiff*, v. *Commscope, Inc. and Andrew Corporation, Defendants.*

Case No. 1:07-cv-02200.

Assigned To: Lamberth, Royce C.

Assign Date: 12/6/2007.

Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated June 26, 2007, pursuant to which CommScope, Inc. ("CommScope") will acquire Andrew Corporation ("Andrew"). As a result of the transaction, CommScope will acquire Andrew's interests, including stock ownership, notes of indebtedness and management rights, in Andes Industries, Inc. ("Andes"). Plaintiff filed a civil antitrust Complaint on December __, 2007 seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition by CommScope of Andrew's holdings in Andes may substantially lessen competition in the market for drop cable and will create interlocking directorates, in violation of Section 7 and Section 8 of the Clayton Act, 15 U.S.C. 18, 19. This loss of competition would likely result in higher prices, reduced innovation, and fewer choices for customers.

At the same time the Complaint was filed, plaintiff also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate both the anti competitive effects of the acquisition and the interlocking directorates. Under the proposed Final Judgment, which is explained more fully below, defendants

are required to divest (a) Andrew's entire ownership in Andes; (b) all notes of indebtedness in favor of Andrew by Andes; (c) all warrants to acquire additional stock of Andes; and (d) intellectual property relating to the "Z-Wire" product (collectively the "Andes Holdings"). At the same time as the required divestiture, defendants will relinquish Andrew's governance rights over Andes, including rights to appoint members of Andes' board of directors. Under the Hold Separate Stipulation and Order, defendants will take certain steps to ensure (a) that defendants do not exercise any of Andrew's management rights in Andes, except in certain narrowly defined circumstances; (b) that Andrew's current member on the Andes' board of directors will resign within two business days after CommScope acquires Andrew and Andrew will not exercise its right to appoint members to Andes' board; (c) that Andes will remain independent of and uninfluenced by defendants during the pendency of the ordered divestiture; and (d) that competition is maintained during the pendency of the ordered divestiture.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APP A. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants and the Proposed Transaction

Defendant CommScope is a Delaware corporation with headquarters in Hickory, North Carolina. It is a major manufacturer and provider of wire and cable products. It manufactures, among other things, drop cable and, through a wholly-owned subsidiary, hardware products used in drop cable installations. For fiscal year 2006, CommScope reported total revenues in excess of \$1.6 billion, with \$550 million coming from its broadband business segment, which includes cable and hardware products sold to cable television and telecommunications companies.

Defendant Andrew is a Delaware corporation with headquarters in Westchester, Illinois. Andrew is a major manufacturer and supplier of antenna and cable products and products for wireless communication systems. For

fiscal year 2006, it reported total sales in excess of \$2.1 billion, with approximately \$1.3 billion coming from its antenna and cable business segment.

Andrew was a manufacturer of drop cable until it sold this business in March 2007 to Andes and Andes' subsidiaries, PCT International, Inc. and PCT Broadband Communications (Yantai) Co. Ltd. (collectively "Andes"). As a result of two transactions between Andrew and Andes, Andrew holds 30 percent of Andes' equity, a warrant to acquire additional stock of Andes, and several Andes' notes of indebtedness. Andrew also holds, under a March 30, 2007, Amended and Restated Investor Rights Agreement (the "IRA"), numerous governance rights over Andes, including rights to designate members of Andes' board of directors. When it sold its drop cable business to Andes, Andrew licensed Andes to use the intellectual property associated with Z-Wire, a dry anti-corrosion protected drop cable.

Pursuant to an Agreement and Plan of Merger dated June 26, 2007, CommScope proposes to acquire Andrew in an all-stock transaction valued at approximately \$2.6 billion. As a result of the proposed acquisition, CommScope would obtain rights to appoint members to the board of directors of Andes, a significant competitor in the development, manufacture and sale of drop cable. In addition, it would be able to exert substantial control over Andes, given its ownership of shares, warrants and debt instruments, and its governance rights. CommScope's acquisition of Andrew would thus substantially lessen competition in the market for drop cable, and would create interlocking directorates between competing companies. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiff.

B. Substantial Lessening of Competition

CommScope's acquisition of Andrew's holdings in Andes would violate section 7 of the Clayton Act because the acquisition's effect may be substantially to lessen competition in the market for drop cable in the United States.

1. Relevant Product and Geographic Markets

a. Drop Cable Product Market

Drop cable is 75 ohm coaxial cable used by cable television companies to connect their transmission systems with their customers' premises and equipment inside the customers' premises. It consists of a plastic jacket,

metal braid and foil shielding, a dielectric layer, and a center conductor. Cable television companies typically use drop cable in three kinds of locations: (1) In the air between outside poles and the exteriors of the customers' premises; (2) underground between buried transmission systems and the exteriors of the customers' premises; and (3) inside the customers' premises to connect the exterior cables with customer-premises devices. Drop cable strung between outside poles and the exteriors of the customers' premises typically contains an ultraviolet ("UV") protectant in the jacket and a steel wire, called a "messenger," inside the cable to reduce flexing; much of this aerial cable also incorporates anti-corrosion protection for the metal shielding. Drop cable used underground typically is "flooded" with a gel compound to prevent water ingress and corrosion.

No matter how it is used, all drop cable purchased by cable television companies is distinguished from other 75 ohm coaxial cable, which is usually called "commodity" cable. Drop cable must meet stringent Society of Cable Television Engineers ("SCTE") and other cable television industry standards. Those standards address, inter alia, durability, uniformity, electrical conduction and signal shielding. Signal shielding standards address the ability of the cable to prevent signal leakage outside the cable, as well as leakage into the cable of extraneous outside signals. Compliance with SCTE and other industry standards assures cable television companies that the drop cable they buy will not require frequent replacement, will fit with the other components of their systems, can readily be handled by a cable system's installers and technicians, and, most importantly, will deliver a strong and interference-free signal.

In addition to the above requirements, some cable television customers require that dry anti-corrosion protection be incorporated into much of the drop cable they buy. Anti-corrosion protection protects the cable's shielding from oxidation, which can result in interference and diminished signal strength. Two types of anti-corrosion coatings are used, gel and dry. Gel coated cables are used for almost all underground installations. A few cable television companies also use them for aerial installations. Many cable television companies require dry-coated cable for all aerial installations. They impose this requirement because dry cable is easier to work with, does not drip from cables onto hardware or customers' property, and costs less. The demand for dry anti-corrosion is

especially strong among cable television companies that operate near the ocean or in other areas prone to metal oxidation.

Drop cable is the relevant product market, or "line of commerce," within the meaning of section 7 of the Clayton Act. Cable television companies, who are the purchasers of drop cable, could not use other types of coaxial cable. Those alternatives do not meet industry standards and could fail to provide the strong and interference-free signal that consumers expect. Because other types of coaxial cable would degrade the performance of their networks, causing cable subscriber dissatisfaction, cable television companies would not switch from drop cable to other types of cable even if faced with a significant price increase.

b. The United States Geographic Market

The United States is a distinct geographic market for the sale of drop cable. SCTE and cable television industry standards are designed to meet the common needs of cable television companies operating in the United States. Although Andes and CommScope manufacture drop cable in China for sale in the United States, no foreign companies make drop cable that conforms to SCTE and United States cable television industry standards, and no foreign companies sell drop cable to cable television companies in the United States.

In addition, cable television companies in the United States require their suppliers to have a substantial presence within the United States, including distribution facilities and service infrastructures. No foreign company maintains such a presence for drop cable in the United States. Therefore, a small but significant increase in the price of drop cable would not cause cable television companies in the United States to substitute purchases from companies who operate outside the United States in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of section 7 of the Clayton Act.

2. Competitive Effects of the Transaction

a. Anticompetitive Effects

CommScope's acquisition of Andrew's interests in Andes would substantially lessen competition in the market for drop cable in the United States. The market for drop cable is already highly concentrated. Only four companies provide drop cable to cable television companies in the United

States. CommScope is the leading manufacturer by a large margin, with a market share of between 60 and 70 percent. Andes is the third largest manufacturer, with about a four percent market share. Andes is having a significant impact in the market because of its lower pricing and ability to offer drop cable with dry anti-corrosion protection.

The full line of products offered by CommScope and Andes make them each other's closest competitors for many customers. Of the four manufacturers, only CommScope and Andes offer drop cable with dry anti-corrosion protection. The processes by which both firms apply the dry chemical coating to the cable's shielding are protected by patent. Many cable television firms need or prefer the dry anti-corrosion protection offered by products in this category, CommScope's Brightwire or Andes' Z-Wire.

Competition between Andes and CommScope in the sale of drop cable has benefited consumers. The prices charged by Andrew and Andes generally have been five to ten percent lower than those charged by CommScope and the other manufacturers. Those lower prices have served as constraints on CommScope's own pricing. Since Andrew's first significant sales several years ago, its market share, and later Andes' market share, have steadily increased, as a greater number of cable television firms have approved their products for purchase.

Andes and CommScope also compete with each other in product innovation. CommScope developed the first dry anti-corrosion protected drop cable product, Brightwire. Andrew developed Z-Wire specifically to compete for sales that would otherwise have gone to Brightwire. Andes and CommScope have continued to engage in efforts to develop new technology.

If CommScope were allowed to acquire Andrew's holdings in Andes, Andes would no longer be an independent drop cable competitor. CommScope's substantial ownership in Andes would reduce its incentive to compete with Andes. In addition, under the IRA, CommScope would obtain substantial governance rights over Andes. Once CommScope completes its acquisition of Andrew, Andes' board of directors will have seven members. CommScope will then have rights to appoint two members of that board, and jointly with another Andes' shareholder, to appoint two more. In addition, CommScope's consent will be required under the IRA for a range of corporate actions by Andes, and CommScope will

hold extensive rights to access Andes' confidential business information. These governance rights, combined with its 30 percent ownership stake and other interests in Andes, would give CommScope both the incentive and the ability to coordinate its activities with those of Andes, and/or to undermine Andes' ability to compete on price and innovation.

b. Entry

Successful entry into the drop cable market would not be timely, likely or sufficient to offset the anti competitive effects resulting from this transaction. The drop cable industry has been characterized by firms exiting and failed entry attempts. Andrew itself began the process of entering the market in 1997, and only now, ten years later, has its successor, Andes, achieved a four percent market share.

Timely entry sufficient to replace the market impact of Andes would be difficult for several reasons. Any new manufacturer would have to develop a product line and set up a manufacturing facility, submit sample products for the extensive laboratory and field tests required by all substantial cable television firms, and then undergo the lengthy process of attempting to sell the products to those companies. Andes' success is due in part to its ability to offer a full line of drop cable products. A new entrant could not duplicate that success unless it could offer drop cable with dry anti-corrosion protection. The Brightwire and Z-Wire products are both protected by patent. Development of a new process which does not infringe on those patents would likely be time-consuming and difficult.

C. Interlocking Directorates

CommScope and Andes compete in the manufacture and sale of both drop cable and hardware products used in drop cable installations. Each company and each company's sales of competing products meet all the threshold tests of section 8 of the Clayton Act. Following the acquisition, as initially structured, CommScope would have the right under the IRA to appoint two members of Andes' seven member board of directors, who would act as its agents on the Andes board. In addition, CommScope would have the right to select, jointly with another Andes shareholder, two more members of the Andes board. CommScope, a person within the meaning of section 8, also nominates the members of its own board of directors. Thus, CommScope's participation through its representatives on both its own board of directors and Andes' board of directors would create

interlocking directorates in violation of section 8.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will eliminate both the anticompetitive effects that would result from CommScope's acquisition of Andrew's holdings in Andes, and CommScope's ability to appoint members of Andes' board of directors. With respect to section 7, the proposed Final Judgment requires defendants, within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Andes Holdings, including Andrew's entire ownership interest in Andes, the intellectual property concerning the Z-Wire product, as well as all notes of indebtedness in favor of Andrew by Andes and warrants to acquire additional stock of Andes. These holdings must be divested to an acquirer that in the United States' sole judgment has the intent and capability of investing in Andes in such a manner as to support the continued competitive operations of its drop cable business. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective acquirers. With respect to section 8, defendants, under the proposed Final Judgment, would no longer have any rights under the IRA, including the rights to appoint members of Andes' board.

Although Andes holds a license from Andrew for the Z-Wire intellectual property, the proposed Final Judgment requires the defendants to divest that intellectual property, subject to Andes' continuing license, to the acquirer. This divestiture will ensure that CommScope does not gain control over a technology that is vital to Andes' ability to compete.

A. Timing of Divestiture

In antitrust cases involving mergers or joint ventures in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in section IV(A), divestiture of the Andes Holdings within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff in its sole discretion may extend the time period for divestiture by up to 60 days.

In this matter the proposed Final Judgment also provides for an additional extension in certain

circumstances. This extension will preserve the abilities of Andes and another Andes shareholder to exercise their rights of first refusal under the IRA. If the defendants find an acquirer approved by plaintiff within the initial period for divestiture, and an agreement with the acquirer has been reached and approved by the plaintiff, and defendants have given written notice of their intent to sell as required by the IRA, the time for completing the divestiture will automatically be extended in order to allow defendants to comply with the IRA's right of first refusal provision. The period of this extension may not exceed five days past the last date on which the right of first refusal provision continues to be applicable.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestiture are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestiture consistent with their obligations under the IRA. Even if the Andes Holdings have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Hold Separate Stipulation and Order.

B. Use of a Trustee

In the event that the defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff to effect the divestiture. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control of Andes Holdings.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the trustee, and the responsibilities of the trustee in connection with the divestiture. The trustee will have the sole responsibility, under section V(B), for the divestiture of the Andes Holdings. The trustee has the authority to accomplish the divestiture at the earliest possible time and "at such price and on such terms as are then obtainable upon reasonable effort by the trustee."

The proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured, under section V(D) of the proposed Final Judgment, so as to provide an

incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and plaintiff setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and plaintiff will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or term of the trustee's appointment.

C. The Hold Separate Stipulation and Order

The Hold Separate Stipulation and Order, filed at the same time as the Complaint, ensures that, pending divestiture of the Andes Holdings, defendants will take no steps to limit Andes' ability to operate as a competitively independent, economically viable, and ongoing business concern, that defendants do not influence Andes' business, and that competition is maintained. The Hold Separate Stipulation and Order bars the defendants from:

1. Voting or permitting to be voted any Andes shares that defendants own, or using or attempting to use any ownership interest in Andes to exert any influence over Andes, except as necessary to carry out defendants' obligations under the Hold Separate Stipulation and Order and the Final Judgment;
2. Electing, nominating, appointing or otherwise designating or participating as officers or directors;
3. Participating in any meetings or committees of the Andes Board of Directors;
4. Communicating to or receiving from any officer, director, manager, employee, or agent of Andes any nonpublic information regarding any aspect of Andes' business, except the information specified in sections V(A) and V(B) of the Hold Separate Stipulation and Order and sections IV(C) and VIII(B) of the proposed Final Judgment; and
5. Exercising certain governance rights under the IRA except as specified in section V(B) of the Hold Separate Stipulation and Order.

In addition, the Hold Separate Stipulation and Order requires Andrew's current representative on Andes' board to resign and bars defendants from acquiring any additional shares of Andes except as specified in section V(D) of the Hold

Separate Stipulation and Order. It also requires defendants to continue to provide Andes certain support services until the end of February 2008.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement; whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the

parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against CommScope's acquisition of Andrew. Plaintiff is satisfied, however, that the divestiture of the Andes Holdings described in the proposed Final Judgment will eliminate the possibility of interlocking directorates and preserve competition in the development, manufacture and sale of drop cable in the relevant market identified in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v.*

Microsoft Corp., 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).¹

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).² In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not

¹ The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

² *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; see also *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459-60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the

practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.³

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: December 6, 2007

Respectfully submitted,

/s/

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³ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized."); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.").

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2004-06

Notice is hereby given that, on September 4, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 2004-06 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ExxonMobil Research and Engineering Company, Fairfax, VA; and Shell Global Solutions (US) Inc., Houston, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF Project No. 2004-06 intends to file additional written notifications disclosing all change in membership.

On March 15, 2007, PERF Project No. 2004-06 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62867).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on October 29, 2007, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its